



ARIZONA STATE SENATE
Fifty-Second Legislature, Second Regular Session

FACT SHEET FOR H.B. 2388

qualified disability expenses; eligible individuals

Purpose

Establishes the Achieving a Better Life Experience (ABLE) Act, and outlines requirements relating to the ABLE Program (Program), including the creation of an oversight committee and the selection of a financial institution to administer and manage the Program.

Background

The ABLE Act amends Section 529 of the Internal Revenue Service Code of 1986 to create tax-free savings accounts for individuals with disabilities, called ABLE accounts. Contributions to the account may be made by any person, including the account beneficiary, family and friends, and may or may not be tax deductible depending on the specifics of state ABLE laws.

Federal law limits eligibility to individuals with significant disabilities with an age of onset of disability before turning 26 years of age. A person who meets this requirement and who is also receiving supplementary security income benefits is automatically eligible to establish an ABLE account; those with an age of onset of disability before turning 26 years of age who do not receive supplemental security income benefits are eligible to open an ABLE account upon obtaining a disability certification from a physician.

The ABLE Act requires amounts in ABLE accounts to be disregarded in determining eligibility for means-tested federal programs, except distributions for housing expenses under the supplemental security income program and for amounts in an ABLE account exceeding \$100,000. Additionally, the ABLE Act suspends the payment of supplemental security income benefits to an individual during any period in which such individual has excess resources in an ABLE account, but does not suspend or affect the Medicaid eligibility of such individuals (26 U.S. Code Section 529A).

Examples of qualified disability expenses related to the blindness or disability of a program beneficiary include expenses for: 1) housing; 2) transportation; 3) education; 4) employment training and support; 5) assistive technology and personal support services; 6) health, prevention and wellness; 7) financial management and administrative services; 8) legal fees; and 9) funeral and burial expenses.

House Bill 2388 appropriates \$240,000 from the state General Fund in FY 2016-2017 to the Department of Economic Security (Department) for the implementation and administration of the Program.

Provisions

Definitions

1. Defines *ABLE* as the Achieving a Better Life Experience Act.
2. Defines *account* as an individual account in the fund established for a single designated beneficiary.
3. Defines *Committee* as the Achieving a Better Life Experience Act Oversight Committee.
4. Defines *Department* as the Department of Economic Security.
5. Defines *designated beneficiary* as the eligible individual who establishes as account and who is the owner of the account.
6. Defines *eligible individual* as an individual who is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained 26 years of age or a disability certification with respect to such individual is filed with the U.S. Secretary of the Treasury for such taxable year as stipulated in the federal ABLE Act.
7. Defines *financial institution* as any bank, commercial bank, national bank, savings bank, savings and loan association, credit union, insurance company, brokerage firm or other similar entity that is authorized to do business in this state.
8. Defines *fund* as the ABLE Program fund.
9. Defines *Program* as the qualified ABLE Program that is established by this act and defined in federal ABLE Act.
10. Defines *qualified disability expenses* as any expenses that are related to the eligible individual's blindness or disability and that are for the benefit of an eligible individual who is the designated beneficiary of an account, including education, housing, transportation, employment training and support, assistive technology and personal support services, health care, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring and funeral and burial expenses and any other expenses that are approved the by the U.S. Secretary of the Treasury as required by the federal ABLE Act.

Department Duties

11. Requires the Department to:
 - a) develop and implement the Program through the adoption of rules, guidelines and procedures in consultation with the Committee;
 - b) retain professional services, if necessary, including accountants, auditors, consultants and other experts;

- c) seek rulings and other guidance from the U.S. Department of Treasury and the Internal Revenue Service (IRS) relating to the Program;
- d) make changes to the Program, as necessary, to comply with the federal ABLE Act and any regulations issued pursuant to the federal ABLE Act;
- e) provide notification to the chairpersons of the Senate Health and Human Services Committee and the House of Representatives Children and Family Affairs Committee or their successor committees of any material changes to the federal program that would necessitate changes to state law or adopted rules;
- f) negotiate and select the financial institution or institutions to act as the depository and manager of the Program, and consult with the Committee when selecting the financial institution or institutions;
- g) negotiate a fee with the financial institution or institutions;
- h) maintain the Program on behalf of this state as required by the federal ABLE Act;
- i) develop and implement requirements, in consultation with the Committee, for disbursements from accounts for qualified disability expenses;
- j) provide for separate accounting for each designated beneficiary of the designated beneficiary's account;
- k) develop procedures for educating account owners about nonqualified and qualified expenses if the Department finds that distributions from any account were made for nonqualified expenses; and
- l) develop and provide, in consultation with the Committee, educational materials on the Program, qualified disability expenses and requirements for being a designated beneficiary.

Financial Institution Selection/Contract

- 12. Requires the Department to implement the operation of the Program through the use of one or more financial institutions to act as the depositories of the fund and managers of the Program.
- 13. Allows persons, under the Program, to submit applications for enrollment in the Program and establish accounts in the fund at the financial institution.
- 14. Requires monies paid by account owners and other contributors to the fund for deposit in accounts maintained by the fund at a financial institution:
 - a) to be paid to the financial institution as an agent of the fund; and
 - b) to provide that all monies paid by account owners and other contributors to fund accounts held at financial institutions are being paid to the fund.
- 15. Requires the Department to solicit proposals from financial institutions to act as the depositories of fund monies and managers of the Program.
- 16. Requires financial institutions that submit proposals to describe the financial instruments that will be held in accounts.
- 17. Requires the Department, after review and recommendation from the Committee, to select proposals from financial institutions to act as depositories and managers.

18. Exempts the solicitation and selection process from procurement code requirements.
19. Requires the Department, on the recommendation of the Committee, to select the financial institution or institutions to implement the Program from among bidding financial institutions that demonstrate the most advantageous combination, both to potential Program participants and this state, of the following factors:
 - a) financial stability and integrity;
 - b) the safety of the investment instruments being offered, taking into account any insurance provided with respect to these instruments;
 - c) the ability of the financial institutions, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;
 - d) the financial institution's plan for promoting the Program and the investment it is willing to make to promote the Program;
 - e) the fees, if any, proposed to be charged to eligible individuals for maintaining accounts;
 - f) the minimum initial deposit that the financial institution will require for the investment of fund monies, if any, and the willingness of the financial institution to accept contributions through payroll deduction plans and other deposit plans;
 - g) any other benefits to this state or its residents included in the proposal, including an account opening fee payable to the Department by the designated beneficiary and an additional fee from the financial institution for statewide and national Program marketing by the Department; and
 - h) the ability of the financial institution to develop procedures for educating account owners about qualified and nonqualified expenses.
20. Requires the Department to enter into a contract with a financial institution or financial institutions to serve as Program managers and depositories, and requires the Program management contracts to provide the terms and conditions by which financial institutions shall sell interests in the fund to designated beneficiaries, invest monies in the fund and manage the Program.
21. Allows the Department to select more than one financial institution and investment for the Program if the Department concludes that the choice of instrument vehicles is in the best interest of the designated beneficiaries and will not interfere with the promotion of the Program.
22. Requires the Program manager to:
 - a) take all action required to keep the Program in compliance with the requirements of this article and all action not contrary to this article or its contract to manage the Program so that it is treated as a qualified ABLE Program under the federal ABLE Act;
 - b) keep adequate records of each of the fund's accounts, keep each account segregated from each other account and provide the Department with the information necessary to prepare statements required the federal ABLE Act and any regulations issued and any annual reports prepared by the Department;
 - c) provide representatives of the Department of other state agencies with access to the Program manager's books and records to the extent needed to determine compliance with the contract; and

- d) hold all operating monies in the fund in the name of and for the benefit of the fund and this state.
23. Requires any contract executed between the Department and a financial institution be for a term of at least three years and not more than seven years.
24. Allows the Department to terminate a contract with a financial institution at any time for good cause on the recommendation of the Committee, and requires the Department, if a contract is terminated, to:
- a) take custody of accounts held at that financial institution; and
 - b) seek to promptly transfer the accounts to another financial institution that is selected as a Program manager and into investment instruments as similar to the original investments as possible.

Incapacitated or Minor Eligible Individuals

25. Allows an account, if an eligible individual is a minor or incapacitated adult, to be opened and managed by any of the following as long as the individuals listed are not in conflict with federal ABLE Act requirements:
- a) an agent under a valid power of attorney signed by the eligible individual at a time when the eligible individual had capacity to execute the power;
 - b) a parent of a minor child who is an eligible individual;
 - c) a court-appointed conservator of the estate of the eligible individual; or
 - d) a court-appointed guardian of the eligible individual, with express authorization.
26. Allows the court in its discretion to waive any requirement of further accounting or inclusion in any bond established for the conservatorship in any case in which a court authorizes the conservator or guardian of the eligible individual to open and manage the account.

Program Requirements

27. Requires the Program to require:
- a) a designated beneficiary to have only one account;
 - b) a designated beneficiary to direct the investment of any contributions to the Program or any earnings not more than two times in any calendar year;
 - c) contributions to accounts to be made only in cash; and
 - d) that any excess contributions with respect to a designated beneficiary be rejected pursuant to federal ABLE Act regulations.
28. Prohibits contributions and earnings on a designated beneficiary's account in this or any other state from being counted as income or resources of the designated beneficiary for the purposes of eligibility for any program under this title or a program offered by the Arizona Health Care Cost Containment System.
29. Allows a claim, on the death of the designated beneficiary and subject to any outstanding payments due for qualified disability expenses, to be filed for payment of all amounts remaining in the account not in excess of the amount equal to the total medical assistance

paid for the designated beneficiary after establishment of the account as authorized by federal ABLE Act regulations.

30. Allows an account to be opened by a designated beneficiary by completing an application in the form prescribed by the Department, and requires separate records and accounting be maintained for each account for each designated beneficiary.
31. Prohibits a designated beneficiary from using any interest in an account as security for a loan, and states any pledge of an interest in an account is of no force and effect.
32. Requires the financial institution to provide statements to each designated beneficiary at least once each year within 31 days after the 12-month period to which they relate, and requires the statement to identify:
 - a) the contributions made during a preceding 12-month period;
 - b) the total contributions made through the end of the period;
 - c) the value of the account as of the end of this period;
 - d) distributions made during this period; and
 - e) any other matters that the Department requires be reported to the account owner.
33. Requires statements and information returns relating to accounts to be prepared and filed to the extent required by federal or state law.
34. States that any social security numbers, addresses or telephone numbers of designated beneficiaries that come into the possession of the Department are confidential, are not public records and shall not be released by the Department.

Limitations

35. States the article relating to the ABLE accounts does not:
 - a) give any designated beneficiary any rights or legal interest in an account unless the designated beneficiary is the account owner;
 - b) guarantee that an eligible individual will receive services from a department or agency of this state related to the eligible individual's disability; and
 - c) guarantee that the amounts deposited in an eligible individual's account and any earnings on that account pursuant to the Program will be sufficient to cover any qualified disability expense of the eligible individual.
36. States the article relating to the ABLE accounts does not establish any obligation of this state or any agency of this state to guarantee for the benefit of any eligible individual, contributor to an account or designated beneficiary any of the following:
 - a) the return of any amounts contributed to an account;
 - b) the rate of interest or other return on any account; or
 - c) the payment of interest or other return on any account.
37. Requires every contract, application, deposit slip or other similar document that may be used in connection with a contribution to an account to clearly indicate that the account is not

insured by this state and neither the principal deposited nor the investment return is guaranteed by this state.

Achieving a Better Life Experience Act Oversight Committee (Committee)

38. Establishes the Committee in the Department and establishes Committee membership as follows:
 - a) the Director of the Department or the Director's designee;
 - b) the State Treasurer or the State Treasurer's designee;
 - c) one member who has knowledge, skill and experience in investment, asset management or financial-related experience and who is appointed by the Governor;
 - d) one member who is a licensed attorney in this state, who has knowledge, skill and experience in special needs trusts and disability issues and who is appointed by the Governor;
 - e) one member who is an eligible individual and who is appointed by the Governor;
 - f) one member who is a family member of an eligible individual and who is appointed by the Governor; and
 - g) one representative of a community-based organization that supports or advocates for individuals with disabilities who is appointed by the Governor.
39. Requires the Committee to select a chairperson from the Committee's membership.
40. Requires the Committee meet at least once each calendar quarter, and states Governor-appointed Committee members are eligible to receive compensation for each day in attendance at Committee meetings at a rate not to exceed \$30 per day.
41. States Governor-appointed Committee members serve four-year terms, and prohibits Governor-appointed Committee members from serving more than two terms on the Committee.
42. Requires the Committee to:
 - a) make recommendations and provide guidance for the establishment, implementation and improvement of the Program, including statutory and rule changes;
 - b) make recommendations regarding the selection of one or more financial institutions to act as depositories and managers of the accounts;
 - c) review regulations adopted by the U.S. Secretary of the Treasury and identify changes necessary for Program compliance;
 - d) provide advice regarding requirements for disbursements from accounts for qualified disability expenses; and
 - e) monitor the use and effectiveness of the Program, including the number of accounts established and used, the number of designated beneficiaries being served, a description of the types of disabilities the designated beneficiaries have and the types of expenses for which disbursements have been made.
43. Immunizes Committee members from personal liability with respect to all actions that are taken in good faith and within the scope of the Committee's authority.

44. Terminates the Committee on July 1, 2024.

Annual Report

45. Requires the Department to submit an annual report for seven years after the effective date to the Speaker of the House of Representatives, the President of the Senate and the Governor that summarizes the effectiveness of the Program, including:

- a) the number of accounts established and used;
- b) the number of designated beneficiaries being served;
- c) a description of the types of disabilities the designated beneficiaries have; and
- d) a summary of the qualified disability expenses for which disbursements from the accounts are being used.

46. States the first annual report is due on or before December 31, 2017, and that the remaining four reports are due on or before December 31 of each year thereafter.

Rulemaking

47. Requires the Department to establish the rules necessary to implement the Program on or before July 1, 2017, and exempts the Department from rulemaking requirements for one year.

48. Requires the Department to consult with the Committee when drafting the rules, to provide a 30-day public comment period on the draft rules and to hold at least one public hearing before adopting the rules.

Appropriation

49. Appropriates \$240,000 from the General Fund in FY 2016-2017 to the Department to implement and administer the Program, and exempts the appropriation from provisions relating to lapsing of appropriations.

Miscellaneous

50. Terminates the Program on July 1, 2026.

51. States, retroactive to December 31, 2015, the amount of withdrawal that is not a qualified disability expense from an ABLE account is not included in computing federal adjusted gross income, except that the amount added shall not exceed the difference between the amount subtracted from the Arizona gross income in prior taxable years and the amount added to the Arizona gross income in any prior taxable years.

52. Requires, retroactive to December 31, 2015, the amount of qualified disability expenses that is distributed from a qualified ABLE program and that is included in income in computing federal adjusted gross income to be subtracted from Arizona gross income.

53. Staggers initial terms of Committee members, and requires the Governor to make all subsequent appointments as prescribed by statute.

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54. Makes technical and conforming changes.

55. Becomes effective on the general effective date.

House Action

CFA	1/25/16	DPA	8-0-0-1
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3 rd Read	2/29/16		56-3-1-0

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